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No. 97-1760

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

COASTAL PETROLEUM COMPANY,
Petitioner,

vs.

Hon. LAWTON CHILES, et al., as and constituting the Board of Trustees of the Internal Improvement Trust Fund, and as constituting the Executive Board of the Department of Natural Resources of the State of Florida,
Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal, First District of Florida

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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24 pp

QUESTIONS PRESENTED

[as framed by Petitioner]

1. Does the Takings Clause of the Fifth Amendment to the Unites States Constitution protect petitioner's long-term oil and gas royalty on sovereignty submerged lands from outright confiscation by Florida?

2. Whether Florida impairs its own contractual obligations in violation of Art. 1, §10 of the United States Constitution by refusing to enter into leases on sovereignty lands thereby rendering petitioner's royalty worthless?

3. Does Dolan v. City of Tigard, 512 U.S. 374 (1994), require Florida to establish "rough proportionality" between its absolute restriction on drilling for oil and gas, and the environmental perils it seeks to avert?

4. Has Florida denied petitioner its royalty without the due process of law required under the Fourteenth Amendment to the Constitution when it declared petitioner's royalty "speculative" and therefore worthless, without allowing petitioner a fair opportunity to introduce evidence of value?

Respondents will argue that none of the questions are fairly presented, as all assume Petitioner's royalty is indeed property under state law--a matter the decisions below resolved against Petitioner. Also, Petitioner's third question was not raised or ruled upon below, and is not preserved for review.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 2

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 6

A. The Decision Below Is Highly Factual; And Turns On A Question of State Law Only, That Coastal's Royalty Interest Is Not "Property" .. 6

B. Prudential Concerns Weigh Strongly Against Certiorari Review 11

C. The Remaining Questions Suggested By Coastal Are Not Fairly Presented .. 15

1. Impairment of Contract 15

2. Conflict with Dolan's "Rough Proportionality" Test 16

3. Opportunity to Present Evidence of Value 17

CONCLUSION 18

TABLE OF AUTHORITIES

Cases **Page(s)**

Federal

Barnhill v. Johnson, 503 U.S. 393 (1992) 7

Brady v. Maryland, 83 S. Ct. 1194 (1963) 11

Coastal Petroleum Co., v. International Minerals Corp., 709 F.Supp. 1092 (N.D. Fla. 1988) 2

Coastal Petroleum Co. v. Sec. of the Army, case nos. 68-951-Civ-CA & 69-699-Civ-CA [unpublished] (S.D. Fla. Feb. 5, 1971) 9

Dolan v. City of Tigard, 512 U.S. 374 (1994) i,16

Illinois Central Railroad v. Illinois, 146 U.S. 387 (1892) ... 8

Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886 (1992) 9,10

Marine One, Inc. v. Manatee County, 898 F.2d 1490 (11th Cir. 1990) 17

Olson v. U.S., 292 U.S. 246 (1934) 14

Ruckelshaus v. Monsanto, 467 U.S. 986 (1984) 7,15

United States v. Johnson, 268 U.S. 220 (1925) 11

State

Broward v. Mabry, 58 Fla. 298, 50 So. 826 (1909) 8

Coastal Petroleum Co. v. American Cyanamid Co.,
492 So. 2d 339 (Fla. 1986) 8

Conway Land, Inc. v. Terry, 542 So. 2d 362 (Fla. 1989) 10,11

Graham v. Estuary Properties, Inc., 399 So. 2d 1374
(Fla. 1981), *cert. denied*, 454 U.S. 1083 (1981) 14

Neel v. Rudman, 33 So. 2d 234 (Fla. 1948) 7

State v. Black River Phosphate Co., 32 Fla. 82,
13 So. 640 (1893) 8

State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908) 8

Welles v. Berry, 434 So. 2d 962 (Fla. 2d DCA 1983) .. 8,15

Other Authority

28 U.S.C. §1257(a) 2,11

Art. X, §11, Fla. Const. 8

§253.52, Fla. Stat.. 15

ch. 90-72, Laws of Fla.. 3,5

Stern & Gressman, Supreme Court Practice (7th ed. 1993) 11

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OPINIONS BELOW

The opinion by the First District Court of Appeal (Pet. App. 1-12) is reported at 701 So.2d 619. The opinion of the trial court (Pet. App. 13-33) is not reported.

JURISDICTION

The decision below was a final decision by the First District Court of Appeal of Florida on November 5, 1997. The Florida Supreme Court declined discretionary review on January 28, 1998. The petition for writ of certiorari was docketed on April 28, 1998. Petitioner has invoked this Court's jurisdiction under 28 U.S.C. §1257(a).

Respondents will urge the decision below was tantamount to a determination that Coastal's royalty interest was not "property" under Florida law. By petitioning for certiorari, Coastal seeks reversal on the underlying issue of state law only. This Court does not have jurisdiction to do so.

STATEMENT OF THE CASE

This case addresses a matter of state law; that is, whether a residual royalty interest in sovereign land--given the unusual facts of this case--is a property interest under Florida law. Essentially, Coastal seeks certiorari to reverse a decision of state law that no property interest arose, in order to press its federal claim that a 1990 statute effected a taking of its royalty interest.

In 1941, Coastal's corporate predecessor leased a tremendous swathe of land under Florida's Gulf waters. In 1976, Coastal entered an agreement settling litigation with Respondents ("Florida" or the "State"), and relinquishing all but a royalty interest in the nearshore portion of that land.[1] Coastal Petroleum

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[1]The map on page 55 of Coastal's appendix is helpful. It shows that after the 1976 settlement Coastal's lease was reduced to two parallel bands of land under the Gulf of Mexico. Each band is about 3 nautical miles wide, roughly following the coastline, from Naples to Apalachicola. The more landward band (aqua on the map) is subject to Coastal's residual interest. For clarity, this band will be referred as the "royalty area." It is the only area at issue in this litigation.

Co., v. International Minerals Corp., 709 F.Supp. 1092, 1098 n.3 (N.D. Fla. 1988) By statute, the 1990 Legislature banned future oil and gas drilling throughout Florida's Gulf waters, not just near the shore. Ch. 90-72, Laws of Florida (1990), codified as §253.61(1)(d) & §377.24(9), Florida Statutes (prohibiting oil and gas leases and permits for most of Florida's territorial waters in the Gulf and Atlantic).

Coastal's statement omits highly factual conclusions reached by the state courts. The trial court found that from 1947 to 1968 twenty-two offshore wells were drilled, only one of which--not in the royalty or offshore areas--discovered any oil or gas. There were no third-party requests for leases in the royalty area during the 15 years between the settlement and the instant litigation. (Pet. App., p. 3, 14-16) These facts compelled the conclusion the royalty area was not "prospective" for oil and gas in 1976, when Coastal relinquished all but its royalty interest back to the Trustees pursuant to the settlement agreement. (Pet. App. p. 5, 16)

The trial court found the 1976 agreement was silent as to whether the State was to cooperate with potential future lessees, and contained no provision requiring the royalty area to be leased at all. (Pet. App., p. 16) The court also found, based on Florida law, that the settlement agreement did not imply a condition that the State would lease land within the royalty area. It concluded that the settlement agreement did not give Coastal any right to require the royalty area be leased to others. Therefore, Coastal's royalty interest was "only a conditional right to profits that might be derived form oil production in the future." (Pet. App., p. 18)

The most seaward band (dark blue on map) is subject to Coastal's right to actively explore for oil and extract any commercial quantities found. The two bands are separated by a third band (white on map), in which Coastal relinquished all its interests.

Section 3, part 1.(D) of the settlement provided:

> Coastal shall have no right to intervene in any land use decisions within the areas leased other than as to the outermost three miles retained by Coastal. Coastal's only rights ... shall be the specified residual royalty on oil, gas, and other minerals. [e.s.]

See "Memorandum of Settlement" at §3, par. 1.(D) [Pet. App., p. 50].

This language covers any land use decisions, not just those made by the titleholder of the royalty area; that is, the Board of Trustees of the Internal Improvement Trust Fund. The trial court held that under §3, part 1.(D), Coastal "surrendered its rights to the Trustees," including any right as to granting new leases--a land use decision. (Pet. App., p. 20-21) Therefore, the court concluded the royalty interest was "not a 'right' that was taken by the laws prohibiting exploration and production of oil in the nearshore [royalty] area." (Pet. App., p. 21) Later, the court added:

> Under these circumstances, Coastal's reservation of the royalty interest not only failed to create a duty on the part of the State to lease, but failed to contain any reasonable expectation that the State would lease in the future.
>
> * * *
>
> Recovery of any profits form the reserved royalty interest would be purely speculative. In fact, there were many obstacles to a potential recovery of profits even before the 1990 legislation .... Coastal's opportunity to recover a profit from oil produced in the nearshore area depends [on] a

> series of possibilities, one stacked on another.
>
> * * *
>
> A more practical interpretation leads the court to conclude that no property right was taken and that no compensation can be due.

(Pet. App., p. 25-33)

The First District Court of Appeal agreed:

> We concur in the sound reasoning of the trial court in determining that [B]ecause of Coastal's lack of a reasonable expectation that the State would lease and its lack of ability to force the State to lease, the State's action in protecting its' [sic] sovereign submerged land by preventing exploration and drilling does not constitute a compensable taking of Coastal's reserved property interest.

(Pet. App., p. 2) In reaching this conclusion, the First DCA repeated several of the trial court's conclusions as to the royalty area's prospects for containing commercial quantities of oil. It then held Coastal's royalty interest did not rise to a "protectable property interest under the law of inverse condemnation." (Pet. App., p. 11)

This is the context in which Coastal contends ch. 90-72, Laws of Florida (Pet. App., p.56-9) effected a taking. That law, a land use decision by the Florida Legislature, prohibited oil and gas leasing in Florida's Gulf waters. It did, however, except leases entered before its effective date; thereby not affecting Coastal's active exploration and production rights in the outermost portion of the original leasehold. Coastal seeks compensation for the alleged taking through the statutory prohibition against leasing

the royalty area to others for oil and gas drilling.

REASONS FOR DENYING THE WRIT

A. THE DECISION BELOW IS HIGHLY FACTUAL AND TURNS ON A QUESTION OF STATE LAW ONLY, THAT COASTAL'S ROYALTY INTEREST IS NOT PROPERTY

Coastal's petition fails to show why granting certiorari would be appropriate under Rule 10(c). Under that rule, this Court may grant review when a state court decides an important question of federal law which has not been settled by this Court, but should be; or has decided a federal question in a way conflicting with relevant decisions of this Court.

The petition is deficient under either alternative in 10(c). The opinions of the state trial and appellate courts rest on extensive and unusual facts, and upon a decision of state law only; that the particular interest allegedly taken was not "property" under Florida law. Alternatively, the opinions rest on the highly factual conclusion that the royalty area was not "prospective" for oil and gas, so that Coastal's expectation of a return on the royalty was not reasonable; and thus did not rise to a property interest which was protected.

Coastal concedes the state law nature of this crucial issue, advancing the generality that "a royalty is a protected interest in real property under Florida law." [e.s.] (pet., p. 7-8) This unremarkable observation has nothing to do with the

determination here, that the particular royalty[2] at issue was not "property"; or, if legally property, is factually so speculative that it is not a reasonable investment backed expectation protected by the Takings Clause.

Property interests arise under state law, not the U.S. Constitution. Ruckelshaus v. Monsanto, 467 U.S. 986, 1001 (1984) ("[p]roperty interests ... are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." [internal quotation omitted]). *See also* Barnhill v. Johnson, 503 U.S. 393, 398, 112 S.Ct. 1386, 1389, 118 L.Ed.2d 39 (1992) ("In the absence of any controlling federal law, 'property' and 'interests in property' are creatures of state law"). Under the unusual facts of this case, the decisions of the state courts must be read as a determination that Coastal's particular interest was not property under Florida law; or, if property, not an interest protected by the U.S. Constitution.

The royalty area is sovereignty submerged land of the Gulf of Mexico. As a matter of Florida law, it has long been subject to the public trust doctrine:

> The title to swamp and overflowed lands which Florida received in the 1850s and thereafter was vested in the Board of Trustees for the Internal Improvement Fund of Florida by the legislature. The title to sovereignty lands at this point remained in the legislature as a public trust.

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[2]Florida has long recognized that a royalty interest in minerals is different from the mineral interest itself. *See* Neel v. Rudman, 33 So.2d 234, 237 (Fla. 1948) (en banc) ("a conveyance of a royalty interest and the conveyance of minerals in place are two entirely different documents and convey entirely different interests").

> Illinois Central Railroad v. Illinois, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892); Broward v. Mabry, 58 Fla. 298, 50 So. 826 (1909); State v. Black River Phosphate Co., 32 Fla. 82, 13 So. 640 (1893). These lands differ from other state lands. Sovereignty lands are for public use, "not for the purpose of sale or conversion into other values, or reduction into several or individual ownership." State v. Gerbing, 56 Fla. 603, 608, 47 So. 353, 355 (1908).

Coastal Petroleum Co. v. American Cyanamid Co. 492 So.2d 339, 342 (Fla. 1986). *See also*, Art. X, §11, Fla. Const. (1970 amendment which declares sovereign lands held in trust for all the people).

As the case law discussed in American Cyanamid observes, the public trust doctrine long preceded the 1941 lease to Coastal's predecessor; the leasehold as acquired by Coastal in 1947; and the 1976 settlement agreement. The 1990 law prohibiting offshore drilling was but a legislative exercise of the duty imposed by that doctrine. It was an exercise of proprietary, not regulatory, power. Both courts recognized this. Therefore, Welles v. Berry, 434 So.2d 982 (Fla. 2d DCA 1983), did not create an implied duty in the State to lease the royalty area to others. Subject to the public trust doctrine, the State was not obligated to seek the maximum economic return from sovereign land. This, too, is a matter of state law only. (*See* Pet. App., p. 8-10, 18-26.)

The 1990 law simply made explicit what the public trust doctrine had long implied--that the use of sovereign, submerged land was restricted in ways not applicable to private land, and private use of sovereign land must yield to the best interest of the public as a whole. Consequently, the public trust doctrine, as

manifested in the 1990 law, was an existing rule or understanding--it was an implied condition or reservation in the leases from their inception in 1941.[3] With respect to Coastal's leases, the doctrine was, an implied reservation Application or exercise of the doctrine does not require just compensation under the Takings Clause. *See* Lucas v. South Carolina Coastal Council, 112 S.Ct. 2886, 2901 (1992):

> In light of our traditional resort to "existing rules or understandings that stem from an independent source such as state law" to define the range of interests that qualify for protection as "property" under the Fifth and Fourteenth Amendments ... this recognition that the Takings Clause does not require compensation when an owner is barred from putting land to a use that is proscribed by those "existing rules or understandings" is surely unexceptional. When, however, a regulation that declares "off-limits" all economically productive or beneficial uses of land goes beyond what the relevant background principles would dictate, compensation must be paid to sustain it. [citations omitted]

The public trust doctrine is an existing rule or understanding which was found, in litigation involving Coastal and the State,

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[3]*See* Coastal Petroleum Co. v. Sec. of the Army, case nos. 68-951-Civ-CA & 69-699-Civ-CA [unpublished] (S.D. Fla. Feb. 5, 1971) ("The relationship of the Trustees to Coastal is not as tenants in common or joint tenants but rather as grantor and grantee with the grantor holding a reservation clause. The reservation clause, of course, is the trust doctrine mentioned in footnote 1 above."). [Note: these consolidated cases are in the record below at Plaintiff's Ex. 1, R 4616-24.].

to be a specific reservation in favor of the State in the leases. Exercise of the duty, imposed by the public trust doctrine, to protect sovereignty submerged land cannot be the basis of Coastal's taking claim.[4]

The courts below found Coastal had no contractual right, founded upon the 1976 settlement, to require Florida to pursue other leases in the royalty area. Those courts also found, as a matter of fact, the royalty area had no prospect of containing oil in commercial quantities. They found, as a matter of fact and state law, Coastal had no right to require or even expect that the royalty area be leased to anyone in the future. They held Coastal's interest was not "property" under Florida law; or, if property, was not a protected interest since Coastal had no reasonable expectation of a return on the royalty. Thus, the factual and state-law character of the decisions is paramount.

Coastal correctly cites to Conway Land, Inc. v. Terry, 542 So.2d 362 (Fla. 1989) for the general proposition that a perpetual, non-participatory royalty interest in oil and gas is an interest in real property. Of course, Coastal fails to mention that its interest arises through a lease of sovereign land always subject to the public trust doctrine; its lease was voluntarily amended through the 1976 settlement agreement to relinquish, in the nearshore area, all but the passive royalty interest; the royalty interest was not perpetual, but limited to 40 years; and that evidence adduced at trial showed the nearshore area was not prospective for commercial quantities of oil, thereby raising no reasonable expectation of future leasing. None of this was

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[4]Coastal's reliance on Lucas is also unavailing because the 1990 law did not restrict all economically productive or beneficial uses of the royalty. To the extent there was value there, Coastal retains that value through the possibility of recovery of oil by slant drilling into the royalty area. (Pet. App., p. 28-9)

present in Conway.

Consequently, the petition for certiorari unavoidably seeks review of fact and state-law[5] questions already resolved adversely to Coastal. This Court lacks jurisdiction. *See* 28 U.S.C. §1257 (establishing certiorari jurisdiction to review decisions by the highest state court in which a decision could be had, when a state statute is questioned as being repugnant to the Constitution, etc.; but not establishing jurisdiction to entertain questions of state law only).

B. PRUDENTIAL CONCERNS WEIGH STRONGLY AGAINST CERTIORARI REVIEW

Two courts have concurred in this highly fact-specific case, that Coastal had no protected property interest in the royalty area. Such concurrence turns upon the proven lack of oil and gas in the royalty area, and upon interpretation of the 1976 settlement agreement--a separate contract from the original lease.

In the 1976 agreement, Coastal voluntarily relinquished all rights but the passive royalty in the nearshore area. Coastal also agreed not to intervene in state land use decisions, such as the 1990 Florida law which Coastal now contends effected the taking. Certiorari is highly inappropriate. *See* United States v. Johnson, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari [petition] to review evidence and discuss specific facts."). *See also* Stern & Gressman, Supreme Court Practice (7th ed. 1993)

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[5]This Court is bound by the Florida courts' interpretation of state law. Brady v. Maryland, 83 S.Ct. 1194, 1198 (1963) ("We usually walk on treacherous ground when we explore state law, for state courts, state agencies, and state legislatures are its final expositors under our federal regime." [footnote omitted]).

§4.14 ("The Supreme Court will usually deny certiorari when review is sought of a lower court decision which turns solely upon an analysis of the particular facts involved, or upon the construction of particular contracts or written instruments.").

These highly unusual facts would make this case readily distinguishable as a precedent. Again, certiorari review is not justified.

In addition to sharing the flaw of Part A, Part B of Coastal's petition (p. 8-9) exhibits flaws of its own. Part B again assumes the royalty interest is "property." It also assumes a compensable taking must be found, when the factual record shows the royalty interest--if assumed to be property under Florida law--has such speculative value that Coastal's expectation of a monetary return is not reasonable.[6]

This is where Coastal tries to bootstrap itself into a federal question. It assumes that evidence of the dollar value of the royalty goes only to valuation of taken property. It fails to comprehend that the inability to show any reasonably measurable value also goes to whether the expectation of receiving a royalty payment is "property"; and, if so, whether such property is protected by the Takings Clause. Nothing in this Court's jurisprudence makes the Takings Clause an insurance policy to

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[6]In its second footnote, Coastal faults the State for urging there is no oil to be found in the royalty area, while simultaneously requiring a bond of up to $4.25 billion for clean up costs of a hypothetical million barrel [oil] spill. Coastal fails to inform this Court that the subject bond was for a proposed exploratory well nine miles into the Gulf (Pet. App., p. 73 at par. 8); that is, far outside the royalty area, which extends only 4.36 miles into the Gulf. (Pet. App., p. 4, 15) There is no evidence that any commercial oil deposits 9 miles offshore would also lie within the royalty area.

preserve the speculator's dreams of riches against proper governmental action.

Coastal would evade its erroneous assumptions by baldly asserting the 1990 law deprived it of the only "viable" economic use of its property. Viability is not the issue; reasonableness is. Coastal never asks whether its royalty interest is an investment backed-expectation that is reasonable. Recall the lucid observations by the trial court:

> Recovery of any profits from the reserved royalty interest would be purely speculative. In fact, there were many obstacles to a potential recovery of profits even before the 1990 legislation. First, there would have to be an operator willing to advance the coasts of exploring for oil in the nearshore area. Second, the operator would have to reach a reasonable agreement to lease the land from the state. Third, it would have to be economically feasable [sic] for the operator to produce the oil without violating land regulations in existence at the time of the lease. Fourth the operator would have to actually strike oil. . . . Furthermore, the fact that there has been no oil produced in the nearshore area at any time during the history of Coastal's relationship with the Trustees is another good indicator that Coastal had no reasonable expectation of obtaining a profit from the royalty interest.

(Pet. App., p. 31)

As a matter of fact, the royalty interest had no economic value which Coastal could reasonably expect to realize. None of the cases cited by it stand for the proposition that the government

must pay just compensation anytime it takes property constituting an unreasonable economic expectation. *See* Olson v. U.S., 292 U.S. 246, 257 (1934):

> Elements affecting value that depend upon events or combinations of occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable should be excluded from consideration for that would be to allow mere speculation and conjecture to become a guide for the ascertainment of value ....

The logic of this observation is not limited to the valuation of taken property. It is equally applicable to the determination of whether an economic expectation rises to a protected property interest.

Coastal is no different from the landowner who unsuccessfully challenged development restrictions in Graham v. Estuary Properties, Inc., 399 So.2d 1374, 1383 (Fla. 1981), *cert. denied*, 454 U.S. 1083 (1981) ("Estuary, on the other hand, had only its own subjective expectation that the land could be developed in the manner it now proposes."). Coastal maintained only a subjective expectation that it might, some day, receive a royalty if someone discovered and produced commercial quantities of oil in the royalty area. However, based on the trial court's factual findings--most prominently that the royalty area was not prospective for oil and gas when the 1976 settlement was reached--Coastal's subjective expectation was not reasonable. The Takings Clause simply does not protect Coastal's unreasonable expectation against later exercise of the government's proprietary right to control the use of sovereign land.

The instant petition wrongly assumes Coastal's royalty interest is property under Florida law. It then raises an abstract, almost rhetorical question: If the government takes property shown to create only an unreasonable expectation of monetary return, has the government taken property for which the U.S. Constitution requires just compensation? The question answers itself, and the answer is "no."

C. THE REMAINING QUESTIONS SUGGESTED BY COASTAL ARE NOT FAIRLY PRESENTED

1. Impairment of Contract [Coastal's second question]

Both state courts found there was no contractual or statutory obligation upon Florida to lease the royalty area for oil and gas drilling. (Pet. App., p. 7-10, 19-21) The discussion by both courts focused on the meaning of §253.52, Florida Statutes; the meaning of §3, part 1.(D) of the 1976 settlement agreement; and the applicability of Welles v. Berry, 434 So.2d 962 (Fla. 2d DCA 1983). All three items are matters of fact and state law only. In its impairment of contract argument, Coastal simply asks this Court to re-weigh the evidence, and to re-interpret state law. (*See* pet. at p. 10-12, arguing that the state courts erred as a matter of Florida law.)

For the purpose of a taking under the U.S. Constitution, "property" must be created by an independent source. Ruckelshaus v. Monsanto. Coastal's unavoidable problem is that under the 1976 settlement, it had no right to compel Florida to lease the royalty area at all. As interpreted by the state courts, §253.52, Florida Statutes, did not require the State to lease the royalty area and did not imply a contractual right between Coastal and the State. Therefore, Coastal had no express or implied contractual right which could be impaired by the 1990

law. Its impairment of contract claim has no factual or legal basis justifying review.

2. Conflict with *Dolan's* "Rough Proportionality" Test [Coastal's third question]

Parsing Dolan v. City of Tigard, 512 U.S. 374 (1994), Coastal urges that certiorari should be granted to ascertain whether there is "rough proportionality" between the "ends it [Florida] seeks and the restrictions it imposes" (pet., p. 14). This question is not properly before the Court.

First, Coastal did not raise it the state courts, thereby depriving them of the opportunity to pass upon it. Second, it ignores the profound differences between this case and Dolan.

In Dolan, a landowner was required by the city of Tigard (Oregon) to dedicate part of her land for flood control and traffic improvements in return for approval of a building permit. At no time was the existence of a property interest questioned; at no time was the existence of property value questioned. The city exercised its police power only, and applied that power to control the use of privately owned land.

Here, Coastal voluntarily relinquished all rights in the royalty area beyond the passive royalty itself, as part of a lawsuit settlement. Absolutely nothing required it to do so. It was free to pursue the litigation. Coastal had no property interest, only a distant hope--refuted by experience--that someone, someday might find oil in commercial quantities which could be produced profitably in light of unchallenged environmental regulations. Because Coastal has no right to require or even expect Florida would lease the royalty area in the future, Coastal's hope of a return on the royalty is so speculative that it is not a reasonable expectation.

Unlike Dolan, there was no exaction here. The 1990 law was not just an exercise of the police power. It was an exercise of the right of ownership by the Florida Legislature as trustee of sovereign land. *See* Marine One, Inc. v. Manatee County, 898 F.2d 1490, 1491 (11th Cir. 1990) (holding, under Florida law, revocation of permits for private upland owners to build docks on sovereign, submerged land was not a taking; and rejecting analogy to cases in which a city's application of its zoning laws to owners of private property was determined to constitute a taking). There is no factual support for the analogy to the "rough proportionality" test in Dolan. To the contrary, the analogy is so rough and disproportionate that it is meaningless, and not a basis for certiorari review.

3. Opportunity to Present Evidence of Value [Coastal's fourth question]

Coastal begins its final point by urging the decision below "cannot be supported on the audacious ground that the royalty has been shown to be worthless." (pet., p. 16-17) This point ignores the procedural history of this case.

Originally, the trial court entered summary judgment for the State. (Pet. App., p. 38-45) That judgment was reversed, as material facts were still disputed. Among those facts were the "expectation of the parties at the time [of] the settlement." (Pet. App., p. 37)

Upon remand to the trial court, Coastal had ample opportunity to adduce competent evidence[7] of the value of the

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[7]Coastal urges it is useful to mention some of the evidence of value it "could" introduce. (pet. , p. 18-19) Such evidence appears either inadmissible or incompetent. Some of it is self-serving reliance on reports by the "Oil & Gas Journal" about Coastal's beliefs. The rest

residual interest in the royalty area--not to show "value" for the sake of proving damages, but to show the royalty interest created a reasonable expectation of return; and thus was a protected property interest. Coastal failed to do so. Instead it adduced expert testimony--which the trial court chose not to believe--that the royalty area was indeed prospective for oil and gas at the time of the settlement. In contrast, the State proved, through evidence of the absence of third-party lease requests and the historic failure of all drilling on the leases, that the royalty area was not prospective. Therefore, Coastal's residual royalty did not create a reasonable expectation of return, and was not protected by the U.S. Constitution.

Coastal simply failed to adduce persuasive evidence of value, as part of its effort to show the royalty, under the 1976 settlement agreement, created a reasonable expectation of return; thereby becoming a protected property interest. Coastal's fourth question is no more than an attempt to undo its earlier failure.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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has to do with purchase of leases by the U.S. government, for land far removed from the royalty area.

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